

REMARKS

Applicants hereby request reconsideration of the final rejection of claim 25 in view of the following comments. The remaining claims 4, 5, 7-16, 18-21, 23, and 24 are allowed and the applicant thanks the examiner for that indication.

In rejecting claim 25, the action states that Schroeder, EP 0421913 discloses all limitations except “wherein the first arm and the second arm define an angle greater than 90°” which is allegedly unpatentable over the cited reference in view of “a matter of engineering preference that would have been obvious to one of ordinary skill....” The action provides no factual support for this conclusion, nor does the record include any previously-cited reference disclosing or suggestion the claimed invention. Applicant respectfully submits that it is improper to rely solely on “common knowledge” in the art without evidentiary support in the record as the principal evidence upon which a rejection was based. Further, that if official notice is taken of a fact unsupported by documentary evidence, the technical line of reasoning underlying a decision to take such notice must be clear and unmistakable and the basis must be set forth explicitly. MPEP § 2144.03.

As described at page 5, lines 4-9 and page 8, lines 3-12, the elbow section having a first and second arm defining an angle greater than 90° is not merely a matter of engineering preference. Allowing the arms to define an angle greater than 90° as claimed allows the entire assembly to be closely mounted into window openings with imperfect dimensions. Also, because the record contains no reference that discloses fitting a curtain rod into oddly-shaped openings by including a variable-angled elbow as claimed, applicants submit that the invention cannot be “capable of such instant and unquestionable demonstration as to defy dispute.” MPEP 2144.03. Therefore, because the examiner has failed to cite any evidentiary support that claim 25 recites “a matter of engineering preference that would have been obvious...” and, in fact, the record is devoid of any evidence to support the conclusion, the rejection of claim 25 is improper.

For the above reasons, it is submitted that the final rejection of claim 25 should be withdrawn as claim 25 is in condition for allowance. Moreover, as claim 25 is allowable, the application as a whole is in condition for allowance.

No fee is believed due at this time. However, if another fee is due, the Commissioner is hereby authorized to charge any fee deficiency, or to credit any overpayments, to Deposit Account No. 13-2855 of the undersigned's firm.

Dated: September 8, 2006

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Anthony G. Sitko', is written over a horizontal line.

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